IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 341 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHESHKUMAR KIRTANLAL SHAH

Versus

DISTRICT COLLECTOR

Appearance:

1. Criminal Revision Application No. 341 of 2000

MR YM THAKKAR for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/08/2001

ORAL JUDGEMENT

#. As per the brief facts of the case on 27.11.1997 one Riteshkumar Narsinh Solanki, who was licenced to sell kerosene as per the supply given by the concerned authority, was transporting some barrels of the kerosene

in Tempo GJ-17-T.8149. The Tempo owner was the present petitioner Meheshkumar Kirtanlal Shah. At the relevant time the Tempo was driven by the driver of the present petitioner. While this Tempo was passing through Saher Bordi road, Supply Inspector, Godhra inspected the Tempo and found some irregularities committed in respect to essential commodities i.e. kerosene. It was found that out of the supply of total kerosene 6 barrels of kerosene were unloaded in village Ladhniya. During inspection the 6 barrels were found from the Ladhniya village and 10 barrels were found from the Tempo. The statement of the present petitioner - the licence holder of the kerosene and driver of the Tempo were recorded. The above concerned Supply Inspector came to the conclusion that there was some irregularities in supply of essential commodities and breach of the provision of Essential Commodities Act, 1955 and rules thereunder was committed. A Show Cause Notice to licence holder of the kerosene Mr.Riteshkumar Solanki and to the present petitioner as being the owner of the Tempo in which the essential commodities was being transported was issued by the Collector, Panchmahal on 19.6.1998. Thereafter, supply of kerosine i.e. 10 barrels and Tempo No.GJ-17-T.8149 came to be seized by Supply Officer. Under Section 6(A) of the Essential Commodities Act, 1955 the Collector proceeded against the present petitioner and Mr.Riteshkumar N.Solanki - licence holder of kerosene for the confiscation of the kerosene seized and of the vehicle used in carrying such essential commodities. So far as the licence holder of the kerosene is concerned the Collector, Panchmahal, Godhra was pleased to confiscate the supply of kerosene which was to the extent of 3500 liters costing Rs.8812.79 ps. while so far as the present petitioner is concerned the learned Collector came to the conclusion that the 50% amount of the market price of Tempo bearing No.GJ-17-T.8149 was required to be confiscated. The Collector did not believe the defence of either Tempo owner or kerosene dealer that some of the barrels i.e. 6 barrels to be exact, were licked and, therefore, they were required to be unloaded at Ladhniya village as a measure of safety precaution. This order is dated 24.9.1998.

#. Being aggrieved by the above said order of Collector dated 24.9.1998 the present petitioner filed a Criminal Appeal before the Special Judge i.e. Sessions Judge at Godhra being Criminal Appeal No.58/1998. Vide his order dated 11.4.2000, the Special Judge, Panchmahal, Godhra came to the conclusion that the order passed by the Collector in Supply Case No.7/1997 which was impugned in the appeal was required to be revised and modified to the

extent that instead of 50% of the market price of the Tempo 20% of the market price of the Tempo was ordered to be paid as fine in lieu of confiscation of tempo.

#. Being aggrieved and dissatisfied by the above said order of Special Judge, Panchmahal, Godhra the present petitioner -original appellant has preferred this Criminal Revision Application. The learned advocate Mr.Y.M.Thakkar, for the petitioner applicant and learned APP Mr.B.Y.Mankad, for the respondent were heard.

#. It was urged on behalf of the petitioner that in fact having regard to the panchnama prepared 6 barrels which were unloaded at Ladhniya village were licked and to save the quantity and since the commodity was inflammable and to avoid any accident 6 barrels were down loaded by the driver of the Tempo near Ladhniya village. The commodity was authorised commodity in the sense that the same was allotted to the licence holder and licence holder was transporting the same. It was urged that therefore in transporting the kerosene and unloading 6 barrels at Ladhniya village no illegality or irregularities was committed by the present petitioner. It was urged that the petitioner -applicant is transporter and was no way concerned with the goods in question. The petitioner herein was not at all involved in contravention of the provision of the Essential Commodities Act. Simply, the licence holder had hired the Tempo for transporting kerosene which was authorised commodity. It was urged that in fact there is nothing on the record to denote that the petitioner abetted the contravention of the provision under Essential Commodity Act as alleged to have been committed by the licence holder of the kerosene. It was also urged that it was unjust and arbitrary that the licence holder was penalised only Rs.8812.79 ps. because quantity was confiscated while the present petitioner was penalised to the extent of 87,500/- by the Collector which was reduced to Rs.35,000/- by the Appellate court. It was urged that the revision be allowed and order impugned be quashed and set aside.

#. Learned APP Mr.B.Y.Mankad has drawn my attention to the panchnama prepared by the Supply Inspector, it was urged that there was no reason at all for the Tempo driver or licence holder to unload 6 barrels at Ladhniya village. It was urged that even the owner of the house adjoining the land on which 6 barrels were kept discloses his ignorance about the 6 barrels of the kerosene. It was also urged that the learned Collector has rightly found that the present petitioner and the licence holder

joined hands in committing irregularities regarding essential commodities because there was no documents on record to denote that the Tempo was in fact bonafidely hired by the licence holder for transporting essential commodities. The collector has, according to learned APP, found contradiction in the statement of the licence holder, dealer, the present petitioner and the driver of the Tempo. It was urged that the Collector has rightly held that according to panchnama 6 barrels were not found licked and were unloaded only with ulterior motive to sell them in market which is prohibited by Essential Commodites Act. It is urged that the present petitioner and the licence holder afterwards got up the defence that 6 barrels were unloaded at Ladhniya village because they were licked. It is urged that from the documents on record it is clear case of contravention of prevision of Essential Commodities Act and the orders of the Courts' below therefore do not require any interference in revisional jurisdiction.

#. Having considered rival contention and scrutinising the record available, it appears that the order of the Collector for the confiscation in respect of the Tempo and essential commodities as well requires no interference because there are contradictions in the version of licence holder, dealer, driver and the present petitioner. It is not a simple case wherein the 6 barrels were down loaded at village Ladhniya because the same contained leakage. So far as the confiscation of essential commodities i.e. the kerosene is concerned the same is not the subject matter of this revision. However, though the order of confiscation as passed by the Collector and modified by the Appellate court in respect of the Tempo requires no interference but the extent of confiscation is certainly strikingly improper and arbitrarily. In certain terms Section 6(A) of Essential Commodities Act, 1955 empowers the Collector to confiscate any vehicle used in carrying essential commodity for which the breach is alleged to have been committed under the Essential Commodities Act, 1955. Section 6(A) of the Act further empower the Collector to give option to owner of such vehicle to pay in lieu of its confiscation a fine not exceeding the market price at the date of seizure of essential commodities said to be carried by the said vehicle. Now this is the realm in which the Collector being authorised person is required to exercise judicial discretion. With the facts and circumstances of this particular case exercising judicial discretion means to ascertain to what an extent the owner of vehicle is involved in committing the breach of the provision of the Essential Commodities Act, 1955 in

respect of the particular essential commodity. The nature of the commodity and other attending circumstances are also required to be taken into consideration. Mere fact that a provision is made authorising Collector to give option to the owner of the vehicle to pay fine upto market value of the vehicle denotes that the scope of the discretion of the Collector is very wide which may go from Re.1/- to the market price of the vehicle in ascertaining the fine which the owner of the vehicle would require to be paid. In this wide scope of discretion the Collector is required to take into consideration the material aspects of the case particularly the extent of abetment and involvement of the owner of the vehicle in respect of any essential commodities. It is not the case herein that in selling the quantity in question of the essential commodities, the present petitioner assisted or abetted the license holder of the essential commodities. The fact remains that the present petitioner was a transporter and owner of a Tempo in which the essential commodities was being transported from one place to other and out of the total quantity 6 barrels were unloaded in village Ladhniya. The Collector believed that the same was with ulterior motive to sell kerosene in open market. The fact remains that as per the allegation, within the knowledge of the petitioner and on his abetment only 6 barrels were down loaded near village Ladhniya. However, if the allegations is taken as true, then also the extent of the role played by the present petitioner is also required to be taken into consideration. Beyond this, there is nothing on the record that the petitioner also abetted the illegal distribution or attempted illegal distribution of the essential commodity. In this view of the matter awarding fine to the present petitioner even to the extent of 20% of the market price of the Tempo would undoubtedly too harsh and against the principle of natural justice particularly when the main part is played by the licence holder of the essential commodity and he is punished to the extent that the whole commodity was confiscated to Rs.8812.79 ps. Therefore even to award penalty of 20% to the petitioner in the above stated circumstances would be improper and unjust and interference of this Court is therefore called for, for this limited aspect i.e. the aspect of extent of the amount of fine, to be paid in lieu of the confiscation of the concerned Tempo. The ends of justice would meet if instead of 20% of the market price of Tempo in lieu of confiscation the petitioner is directed to pay fine of Rs.9000/- for which the petitioner has also submitted a Bank Guarantee for the interim custody of Tempo.

#. In this view of the matter, the order impugned of the learned Special Judge in Criminal Appeal No.58/1988 which is passed on 11.4.2000 is modified to the extent that in Supply Case No.7/1997 of the Collector of Panchmahal in lieu of confiscation of the vehicle the present petitioner is directed to pay fine of Rs.9,000/-. This Revision Application is partly allowed and rule is made absolute to the aforesaid extent.

(J. R. VORA, J.)

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